

RESEARCH APPENDIX

Date Transfer Requested: 11/30/2018 (Per: CMH)

Appendix C ... has been added to the 2017 LRB-6070

Appendix A LRB 17-5985

Appendix C LRB 17-6025

Appendix B LRB 17-5990

Appendix D LRB 17-6051

2017 DRAFTING REQUEST

Bill

For: **Dale Kooyenga (608) 266-9180** Drafter: **jkreye**
 By: **sandy** Secondary Drafters: **mgallagh**
 Date: **11/15/2018** May Contact:
 Same as LRB:

Submit via email: **YES**
 Requester's email: **Rep.Kooyenga@legis.wisconsin.gov**
 Carbon copy (CC) to: **joseph.kreye@legis.wisconsin.gov**
marc.shovers@legis.wisconsin.gov
michael.gallagher@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Determining a reduction in individual income tax rates based on the collection of sales and use taxes from out-of-state retailers

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	jkreye 11/28/2018	wjackson 11/16/2018	lparisi 11/16/2018		State
/P2	mgallagh 11/29/2018	kfollett 11/29/2018	lparisi 11/28/2018		State
/P3	jkreye 11/30/2018	anienaja 11/30/2018	lparisi 11/29/2018		State
/P4			mbarman		State

LRB-6025

Vers.

Drafted

Reviewed

Submitted
11/30/2018

Jacketed

Required

FE Sent For: 11/29/2018

<END>

2017 DRAFTING REQUEST

Bill

For: **Dale Kooyenga (608) 266-9180** Drafter: **jkreye**
 By: **sandy** Secondary Drafters: **mgallagh**
 Date: **11/15/2018** May Contact:
 Same as LRB:

Submit via email: **YES**
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No specific pre topic given

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Determining a reduction in individual income tax rates based on the collection of sales and use taxes from out-of-state retailers

Instructions:

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/P3	jkreye 11/30/2018	anienaja 11/30/2018	lparisi 11/29/2018		State
/P4			mbarman		State

Vers.

Drafted

Reviewed

Submitted
11/30/2018

Jacketed

Required

FE Sent For: 11/29/2018

↳ "/P2"
↑
old
version

<END>

Kreye, Joseph

From: Lonergan, Sandy
Sent: Thursday, November 15, 2018 2:48 PM
To: Kreye, Joseph
Subject: drafting instructions for technical changes re: Wayfair decision

Hi Joe,

I left you a voice message about this. Will you please help me determine to whom I should direct this drafting request? Thank you! Sandy

Drafting instructions to clarify the previous language relating to taxing of internet sales:

- Clarify that the Supreme Court decision that resulted in taxing of on-line sales does trigger the previous language (citing a change in federal law) and the revenue collected should be used to lower income taxes in proportion to income taxes collected.
- The lower income tax rates would be published by the Department of Administration and would be based on the actual online sales taxes collected for the period October 1, 2018 through October 1, 2019. The Department of Administration would make the new effective rates applicable to the tax year ending December 31, 2019. The Department of Administration must submit the calculation and new rates to the Joint Finance Committee by October 20, 2019 and the Legislative Audit Bureau shall audit the calculation and report to the Committee on Audit by November 15, 2019. In the event the Legislative Audit Bureau has developed a different calculation the Joint Finance Committee shall decide which calculation shall be applied to lower the rates.
- Clarify that the rates are lowered in proportion to income taxes collected in the previous calendar year. Only the rates (brackets) are adjusted as it pertains to this calculation.

Sandy Lonergan

State Representative Dale Kooyenga
14th Assembly District
324-East, State Capitol
608.266.9180



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-6025/P1

JK:...
WLj

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

m 11-16-18

- 1 AN ACT ...; relating to: determining a reduction in individual income tax rates
2 based on the basis of the collection of sales and use taxes from out-of-state retailers.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Revenue must determine the amount of additional revenue collected from the state sales and use tax as a result of any federal law that expands the state's authority to collect sales and use taxes from out-of-state retailers. After DOR makes that determination, it must then determine how much the individual income tax rates may be reduced in the following taxable year in order to decrease individual income tax revenue by the amount of additional sales and use tax revenue. Finally, DOR must certify its determinations to the secretary of the Department of Administration, to the governor, and to the legislature and specify that the new individual income tax rates will take effect in the following year. No further legislation is required to make this change.

The U.S. Supreme Court recently upheld a South Dakota law that required the collection of state sales and use taxes from any out-of-state seller that either conducts 200 or more transactions annually with consumers in the state or has annual sales in the state exceeding \$100,000. See, *South Dakota v. Wayfair, Inc.*, 585 U.S. ____ (2018). The *Wayfair* decision overturned longstanding precedent that prevented a state from collecting sales and use tax from out-of-state sellers that did not have a physical presence in the state. See, *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

This bill clarifies that the recent U.S. Supreme Court decision that expands a state's authority to collect sales and use taxes from out-of-state retailers triggers the

Committee

determinations mentioned above. The bill also provides that the new individual income tax rates based on the determinations would not take effect automatically in the year following DOR's certification, but, instead, the Department of Administration, in consultation with DOR, would determine the new tax rates to take effect for the taxable year ending on December 31, 2019, and report its determinations to the governor, the Joint Committee on Finance, and the Legislative Audit Bureau. LAB would then review the determinations and report its findings to JCF and the Joint Legislative Audit Bureau. If LAB's review results in a re-determination of the rates, JCF would determine which rates apply to the taxable year ending on December 31, 2019, and report its determination to DOA and DOR.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

the governor, the secretary of administration,
and the Secretary of Revenue

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 73.03 (71) of the statutes is amended to read:

73.03 (71) (a) To determine the amount of additional revenue that the department collected from the taxes imposed under subch. III of ch. 77 as a result of any federal law to expand the United States Supreme Court decision that expands the state's authority to require out-of-state retailers to collect and remit the taxes imposed under subch. III of ch. 77 on purchases by Wisconsin residents during the first 12 months following the date on which the department begins collecting the additional revenue as a result of a change in federal law (the period beginning on beginning on October 1, 2018, and ending on October 1, 2019).

(b) After the department makes the determination under par. (a), the department of administration, in consultation with the department of revenue, shall determine how much the individual income tax rates under s. 71.06 may be reduced in the following for the taxable year ending on December 31, 2019, in order to decrease individual income tax revenue by the amount determined under par. (a). For purposes of this paragraph, the department shall calculate the tax rate

1 reductions shall be calculated in proportion to the share of gross tax attributable to
2 each of the tax brackets under s. 71.06 in effect during the most recently completed
3 taxable year.

4 (c) ~~The department~~ No later than October 20, 2019, the secretary of
5 administration shall certify and report the determinations made under pars. (a) and
6 (b) ~~to the secretary of the department of administration, to the governor, and to the~~
7 legislature the joint committee on finance, and the legislative audit bureau and
8 specify with that certification and report that the new tax rates take effect in for the
9 taxable year plain ~~following the taxable year in which the department makes the~~
10 certification under this paragraph ending on December 31, 2019, subject to par. (d).

History: 1971 c. 40, 215; 1973 c. 90; 1975 c. 39; 1977 c. 143; 1977 c. 196 s. 130 (7); 1977 c. 313; 1979 c. 34; 1979 c. 110 s. 60 (13); 1979 c. 221, 350; 1981 c. 20; 1981 c. 79 s. 18; 1983 a. 275 s. 15 (4); 1983 a. 524; 1983 a. 538 s. 269 (3); 1985 a. 12, 29, 273; 1987 a. 4, 27, 186; 1987 a. 312 s. 17; 1987 a. 328, 378, 399; 1989 a. 31; 1989 a. 56 s. 259; 1989 a. 74, 335; 1991 a. 39, 219, 313, 316; 1993 a. 16, 112, 205, 490; 1995 a. 27 ss. 3434g to 3440m, 9145 (1); 1995 a. 209, 233; 1997 a. 27, 35, 191, 237, 252; 1999 a. 9, 31, 185; 2001 a. 16, 44, 104, 107, 109; 2003 a. 33, 127; 2005 a. 25, 259; 2007 a. 20, 86; 2009 a. 2, 28, 180, 401; 2011 a. 10, 32, 257; 2013 a. 20, 54; 2015 a. 55, 216, 254, 295; 2017 a. 59, 270, 324, 358.

11 **SECTION 2.** 73.03 (71) (d) of the statutes is created to read:

12 73.03 (71) (d) The legislative audit bureau shall review the determinations
13 reported under par. (c) and report its findings to the joint legislative audit bureau ^{& committee} and
14 the joint committee on finance no later than November 15, 2019. If the legislative
15 audit bureau's review of the determinations reported under par. (c) results in a
16 different calculation of the tax rates than that made under par. (b), the joint
17 committee on finance shall determine which tax rates to apply to the taxable year
18 ending on December 31, 2019, and report its determination to the governor, the
19 secretary of administration, and the secretary of revenue.

20

(END)



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-6025/P1
JK:wlj

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

- 1 AN ACT *to amend* 73.03 (71); and *to create* 73.03 (71) (d) of the statutes;
2 **relating to:** determining a reduction in individual income tax rates on the
3 basis of the collection of sales and use taxes from out-of-state retailers.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Revenue must determine the amount of additional revenue collected from the state sales and use tax as a result of any federal law that expands the state's authority to collect sales and use taxes from out-of-state retailers. After DOR makes that determination, it must then determine how much the individual income tax rates may be reduced in the following taxable year in order to decrease individual income tax revenue by the amount of additional sales and use tax revenue. Finally, DOR must certify its determinations to the secretary of administration, to the governor, and to the legislature and specify that the new individual income tax rates will take effect in the following year. No further legislation is required to make this change.

The U.S. Supreme Court recently upheld a South Dakota law that required the collection of state sales and use taxes from any out-of-state seller that either conducts 200 or more transactions annually with consumers in the state or has annual sales in the state exceeding \$100,000. See, *South Dakota v. Wayfair, Inc.*, 585 U.S. (2018). The *Wayfair* decision overturned longstanding precedent that prevented a state from collecting sales and use tax from out-of-state sellers that did not have a physical presence in the state. See, *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

This bill clarifies that the recent U.S. Supreme Court decision that expands a state's authority to collect sales and use taxes from out-of-state retailers triggers the

determinations mentioned above. The bill also provides that the new individual income tax rates based on the determinations would not take effect automatically in the year following DOR's certification, but, instead, the Department of Administration, in consultation with DOR, would determine the new tax rates to take effect for the taxable year ending on December 31, 2019, and report its determinations to the governor, the Joint Committee on Finance, and the Legislative Audit Bureau. LAB would then review the determinations and report its findings to JCF and the Joint Legislative Audit Committee. If LAB's review results in a re-determination of the rates, JCF would determine which rates apply to the taxable year ending on December 31, 2019, and report its determination to the governor, the secretary of administration, and the secretary of revenue.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 73.03 (71) of the statutes is amended to read:

2 73.03 **(71)** (a) To determine the amount of additional revenue ~~that~~
3 reported to the

4 department collected from the taxes imposed under subch. III of ch. 77 as a result of
5 ~~any federal law to expand the~~ United States Supreme Court decision that expands
6 the state's authority to require out-of-state retailers to collect and remit the taxes
7 imposed under subch. III of ch. 77 on purchases by Wisconsin residents during the
8 first 12 months following the date on which the department begins collecting the
9 additional revenue as a result of a change in federal law period beginning on October
10 1, 2018, and ending on October 1 September 30, 2019.

11 (b) After the department makes the determination under par. (a), the
12 department of administration, in consultation with the department of revenue, shall
13 determine how much the individual income tax rates under s. 71.06 may be reduced
14 ~~in the following for the taxable year ending on December 31, 2019,~~ in order to
15 decrease individual income tax revenue by the amount determined under par. (a).
For purposes of this paragraph, ~~the department shall calculate the tax rate~~

1 reductions shall be calculated in proportion to the share of gross tax attributable to
2 each of the tax brackets under s. 71.06 in effect during the most recently completed
3 taxable year.

4 (c) ~~The department~~ No later than October 20, 2019, the secretary of
5 administration shall certify and report the determinations made under pars. (a) and
6 (b) ~~to the secretary of the department of administration, to the governor, and to the~~
7 ~~legislature~~ the joint committee on finance, and the legislative audit bureau and
8 specify with that certification and report that the new tax rates take effect ~~in~~ for the
9 taxable year ~~following the taxable year in which the department makes the~~
10 ~~certification under this paragraph ending on December 31, 2019, subject to par. (d).~~

11 **SECTION 2.** 73.03 (71) (d) of the statutes is created to read:

12 73.03 **(71)** (d) The legislative audit bureau shall review the determinations
13 reported under par. (c) and report its findings to the joint legislative audit committee
14 and the joint committee on finance no later than ~~November 15~~ November 1,
2019. If the
15 legislative audit bureau's review of the determinations reported under par. (c) results
16 in a different calculation of the tax rates than that made under par. (b), the joint
17 committee on finance shall determine which tax rates to apply to the taxable year
18 ending on December 31, 2019, and report by November 10, 2019 its determination
to the governor, the
19 secretary of administration, and the secretary of revenue.

20 (END)

Section 3. Amend sec. 77.51(13g)(intro), Wis. Stats., to read:

(13g) Except as provided in ~~sub. subs. (13gm) and (13h)~~, "retailer engaged in business in this state", for purposes of the use tax, includes any of the following:

Section 4. Create sec. 77.51(13gm), Wis. Stats., to read:

(13gm) (a) "Retailer engaged in business in this state", notwithstanding sub. (13g), does not include a retailer who has no activities in sub. (13g) except for activities described in sub. (13g) (c), unless the retailer meets either of the following criteria in the previous year or current year:

1. The retailer's annual gross sales into this state exceed \$100,000.
2. The retailer's annual number of separate sales transactions into this state is 200 or more.

(b) For purposes of this subsection, all of the following apply:

1. "Year" means the retailer's taxable year for federal income tax purposes.
2. The annual amounts include both taxable and nontaxable sales.
3. Each required periodic payment of a lease or license is a separate sales transaction.
4. Deposits made in advance of a sale are not sale transactions.
5. An out-of-state retailer's annual amounts include all sales into this state by the retailer on behalf of other persons and all sales into this state by another person on the retailer's behalf.

(c) If an out-of-state retailer's annual gross sales into this state exceeds \$100,000 in the previous year, or if the retailer's annual number of separate sales transactions into this state is 200 or more in the previous year, the retailer is required to register with this state and collect sales or use tax on sales sourced to this state under s. 77.522, Stats. for the entire current year.

(d) If an out-of-state retailer's annual gross sales into this state are \$100,000 or less in the previous year and the annual number of separate sales transactions into this state is less than 200 in the previous year, the retailer is not required to register and collect sales or use tax on sales sourced in this state under s. 77.522, Stats. until its sales or transactions meet the criteria in par. (a) for the current year. A retailer is required to collect the sales or use tax for the remainder of the year.



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-6025/P1

JK:wlj

R
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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Curry

Wed
in 11-28-18

re gen

- 1 AN ACT *to amend* 73.03 (71); and *to create* 73.03 (71) (d) of the statutes;
2 **relating to:** determining a reduction in individual income tax rates on the
3 basis of the collection of sales and use taxes from out-of-state retailers.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Revenue must determine the amount of additional revenue collected from the state sales and use tax as a result of any federal law that expands the state's authority to collect sales and use taxes from out-of-state retailers. After DOR makes that determination, it must then determine how much the individual income tax rates may be reduced in the following taxable year in order to decrease individual income tax revenue by the amount of additional sales and use tax revenue. Finally, DOR must certify its determinations to the secretary of administration, to the governor, and to the legislature and specify that the new individual income tax rates will take effect in the following year. No further legislation is required to make this change.

The U.S. Supreme Court recently upheld a South Dakota law that required the collection of state sales and use taxes from any out-of-state seller that either conducts 200 or more transactions annually with consumers in the state or has annual sales in the state exceeding \$100,000. See, *South Dakota v. Wayfair, Inc.*, 585 U.S. ____ (2018). The *Wayfair* decision overturned longstanding precedent that prevented a state from collecting sales and use tax from out-of-state sellers that did not have a physical presence in the state. See, *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

This bill clarifies that the recent U.S. Supreme Court decision that expands a state's authority to collect sales and use taxes from out-of-state retailers triggers the

determinations mentioned above. The bill also provides that the new individual income tax rates based on the determinations would not take effect automatically in the year following DOR's certification, but, instead, the Department of Administration, in consultation with DOR, would determine the new tax rates to take effect for the taxable year ending on December 31, 2019, and report its determinations to the governor, the Joint Committee on Finance, and the Legislative Audit Bureau. LAB would then review the determinations and report its findings to JCF and the Joint Legislative Audit Committee. If LAB's review results in a re-determination of the rates, JCF would determine which rates apply to the taxable year ending on December 31, 2019, and report its determination to the governor, the secretary of administration, and the secretary of revenue.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 73.03 (71) of the statutes is amended to read:

73.03 (71) (a) To determine the amount of additional revenue ^{reported to} ~~that~~ the department collected from the taxes imposed under subch. III of ch. 77 as a result of ~~any federal law to expand the United States Supreme Court decision that expands~~ the state's authority to require out-of-state retailers to collect and remit the taxes imposed under subch. III of ch. 77 on purchases by Wisconsin residents during the first 12 months following the date on which the department begins collecting the additional revenue as a result of a change in federal law period beginning on October 1, 2018, and ending on October 1, 2019. September 30

(b) After the department makes the determination under par. (a), the department of administration, in consultation with the department of revenue, shall determine how much the individual income tax rates under s. 71.06 may be reduced ~~in the following for the taxable year ending on December 31, 2019,~~ in order to decrease individual income tax revenue by the amount determined under par. (a). For purposes of this paragraph, the department shall calculate the tax rate

1 reductions shall be calculated in proportion to the share of gross tax attributable to
2 each of the tax brackets under s. 71.06 in effect during the most recently completed
3 taxable year.

4 (c) ~~The department~~ No later than October 20, 2019, the secretary of
5 administration shall certify and report the determinations made under pars. (a) and
6 (b) ~~to the secretary of the department of administration, to the governor, and to the~~
7 ~~legislature~~ the joint committee on finance, and the legislative audit bureau and
8 specify with that certification and report that the new tax rates take effect in for the
9 taxable year following the ~~taxable year in which the department makes the~~
10 ~~certification under this paragraph~~ ending on December 31, 2019, subject to par. (d).

11 **SECTION 2.** 73.03 (71) (d) of the statutes is created to read:

12 73.03 (71) (d) The legislative audit bureau shall review the determinations
13 reported under par. (c) and report its findings to the joint legislative audit committee
14 and the joint committee on finance no later than November ¹15, 2019. If the
15 legislative audit bureau's review of the determinations reported under par. (c) results
16 in a different calculation of the tax rates than that made under par. (b), the joint
17 committee on finance shall determine which tax rates to apply to the taxable year
18 ending on December 31, 2019, and report its determination to the governor, the
19 secretary of administration, and the secretary of revenue.

20

(END)

Insert
3-19

no later than
November 10, 2019

2019-2020 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-6025/P2ins
JK:wlj

Insert A

Finally, the bill includes in the definition of a “retailer engaged in business in this state” any retailer that has annual gross sales into this state in excess of \$100,000 or an annual number of separate sales transactions into this state of 200 or more.

Insert 3 - 19

1 **SECTION 1.** 77.51 (13g) (intro.) of the statutes is amended to read:

2 77.51 (13g) (intro.) Except as provided in sub- subs. (13gm) and (13h), “retailer
3 engaged in business in this state”, for purposes of the use tax, includes any of the
4 following:

History: 1973 c. 333; 1975 c. 39, 41, 99, 224; 1975 c. 413 s. 18; 1977 c. 29, 418; 1979 c. 1 ss. 57 to 59, 61, 62; 1979 c. 174; 1981 c. 20; 1981 c. 79 s. 17; 1983 a. 23, 27; 1983 a. 189 ss. 92 to 108, 329 (12); 1983 a. 510, 538; 1983 a. 544 ss. 13 to 46, 47 (1) (b); 1985 a. 29, 332; 1987 a. 27, 399; 1989 a. 31, 335, 336; 1991 a. 39, 269, 316; 1993 a. 16, 112, 184; 1997 a. 27, 237; 1999 a. 9, 83; 2001 a. 45, 102; 2003 a. 48; 2005 a. 25, 327, 441, 479; 2007 a. 11, 20, 130; 2009 a. 2 ss. 225 to 345, 389; 2009 a. 12 s. 18; 2009 a. 28 ss. 1830b to 1836h, 1844 to 1846; 2009 a. 276, 330; 2011 a. 208; 2013 a. 20 ss. 1475 to 1484, 1489 to 1491; 2015 a. 55, 170, 361; 2017 a. 17, 59, 190, 324; 2017 a. 365 ss. 111, 112; 2017 a. 366; s. 13.92 (2) (i).

5 **SECTION 2.** 77.51 (13gm) of the statutes is created to read:

6 77.51 (13gm) (a) “Retailer engaged in business in this state” does not include
7 a retailer who has no activities as described in sub. (13g), except for activities
8 described in sub. (13g) (c), unless the retailer meets either of the following criteria
9 in the previous year or current year:

- 10 1. The retailer’s annual gross sales into this state exceed \$100,000.
- 11 2. The retailer’s annual number of separate sales transactions into this state
12 is 200 or more.
- 13 (b) If an out-of-state retailer’s annual gross sales into this state exceed
14 \$100,000 in the previous year or the retailer’s annual number of separate sales
15 transactions into this state is 200 or more in the previous year, the retailer shall
16 register with the department and collect the tax imposed under s. 77.52 or 77.53 on
17 sales sourced to this state under s. 77.522 for the entire current year.

1 (c) If an out-of-state retailer's annual gross sales into this state are \$100,000
2 or less in the previous year and the retailer's annual number of separate sales
3 transactions into this state is less than 200 in the previous year, the retailer is not
4 required to register with the department and collect the tax imposed under s. 77.52
5 or 77.53 on sales sourced to this state under s. 77.522 until the retailer's sales or
6 transactions meet the criteria in par. (a) 1. or 2. for the current year, at which time
7 the retailer shall register with the department and collect the tax for the remainder
8 of the current year.

9 (d) All of the following apply for purposes of this subsection:

- 10 1. "Year" means the retailer's taxable year for federal income tax purposes.
- 11 2. The annual amounts described in this subsection include both taxable and
12 nontaxable sales.
- 13 3. Each required periodic payment of a lease or license is a separate sales
14 transaction.
- 15 4. Deposits made in advance of a sale are not sales transactions.
- 16 5. An out-of-state retailer's annual amounts include all sales into this state
17 by the retailer on behalf of other persons and all sales into this state by another
18 person on the retailer's behalf.

Barman, Mike

From: Kreye, Joseph
Sent: Thursday, November 29, 2018 1:12 PM
To: Barman, Mike
Subject: FW: Draft review: LRB -6025/P2
Attachments: 17-6025/P2.pdf

Hi Mike,

Please request a fiscal estimate for this P2 draft.

Thanks,

Joe

Joseph T. Kreye
Legal Services Manager
Legislative Reference Bureau
608 504-5857

From: Lonergan, Sandy <Sandy.Lonergan@legis.wisconsin.gov>
Sent: Thursday, November 29, 2018 1:09 PM
To: Kreye, Joseph <Joseph.Kreye@legis.wisconsin.gov>
Subject: FW: Draft review: LRB -6025/P2

Hi Joe,
Thank you very much for the quick turn around on this! Does it need to be a /1 for you to request a fiscal note? If so, please make it a /1. Either way, will you please request a fiscal note?
Thank you,
Sandy

Sandy Lonergan
State Representative Dale Kooyenga
14th Assembly District
324-East, State Capitol
608.266.9180

From: Rep.Kooyenga <Rep.Kooyenga@legis.wisconsin.gov>
Sent: Thursday, November 29, 2018 9:00 AM
To: Lonergan, Sandy <Sandy.Lonergan@legis.wisconsin.gov>
Subject: FW: Draft review: LRB -6025/P2

From: LRB:Legal <lrblegal@legis.wisconsin.gov>
Sent: Wednesday, November 28, 2018 5:03 PM

To: Rep.Kooyenga <Rep.Kooyenga@legis.wisconsin.gov>
Subject: Draft review: LRB -6025/P2

Following is the PDF version of draft LRB -6025/P2.

Kreye, Joseph

From: Lonergan, Sandy
Sent: Thursday, November 29, 2018 9:47 PM
To: Kreye, Joseph
Cc: Fabick, Abbey; Williams, Vincent; Schwanz, Nathan; Lambert, RJ
Subject: Wayfair Draft review: LRB -6025/P2

Hi Joe,

Will you please make the suggested edit from DOR? Thank you.

Sandy

From: Kuehl, Nicole M - DOR
Sent: Thursday, November 29, 9:38 PM
Subject: Re: Wayfair Draft review: LRB -6025/P2
To: Lonergan, Sandy

One small suggestion:

77.51

Page 4, Lines 15, 20, and 21:

Change this phrase: "tax imposed under s. 77.52 or 77.53" To this phrase: "taxes administered under s. 77.52 or 77.53"

The reason is because other sales taxes (e.g., county, stadium, premier resort) are not imposed under s. 77.52 or 77.53 – they are administered under the provisions of the general state sales and use tax in ss. 77.52 and 77.53.

Sent from my iPhone

On Nov 29, 2018, at 1:07 PM, Lonergan, Sandy - LEGIS <Sandy.Lonergan@legis.wisconsin.gov> wrote:

Ok. I will. Thank you.

Sandy Lonergan
State Representative Dale Kooyenga
14th Assembly District
324-East, State Capitol
608.266.9180

From: Kuehl, Nicole M - DOR <NicoleM.Kuehl@wisconsin.gov>
Sent: Thursday, November 29, 2018 12:02 PM
To: Lonergan, Sandy <Sandy.Lonergan@legis.wisconsin.gov>
Subject: Re: Wayfair Draft review: LRB -6025/P2

I just sent it around to our team. If you ask the drafting attorney to submit for a fiscal it will be entered into the system and we can start working on it.

Sent from my iPhone

On Nov 29, 2018, at 11:39 AM, Lonergan, Sandy - LEGIS <Sandy.Lonergan@legis.wisconsin.gov> wrote:

Hi Nicole,

We think this draft looks good. Please share with your team and let me know if it is good now. Also, are you able to start working on the fiscal note now?

Thank you,
Sandy

Sandy Lonergan
State Representative Dale Kooyenga
14th Assembly District
324-East, State Capitol
608.266.9180

<17-6025_P2.pdf>

CONFIDENTIALITY NOTICE: This electronic mail transmission and any accompanying documents contain information belonging to the sender which may be confidential and legally privileged. This information is only for the use of the individual or entity to whom this electronic mail transmission was intended. If you are not the intended recipient, any disclosure, copying, distribution, or action taken in reliance on the contents of the information contained in this transmission is strictly prohibited. If you have received this transmission in error, please immediately contact the sender and delete the message. Thank you.

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11/29 Today
State of Wisconsin
2017 - 2018 LEGISLATURE
Hofmann

LRB-6025/P2
JK/wlj&kjf
193
JMV

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Insert

- 1 AN ACT *to amend* 73.03 (71) and 77.51 (13g) (intro.); and *to create* 73.03 (71) (d)
2 and 77.51 (13gm) of the statutes; **relating to:** determining a reduction in
3 individual income tax rates on the basis of the collection of sales and use taxes
4 from out-of-state retailers.

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Under current law, the Department of Revenue must determine the amount of additional revenue collected from the state sales and use tax as a result of any federal law that expands the state's authority to collect sales and use taxes from out-of-state retailers. After DOR makes that determination, it must then determine how much the individual income tax rates may be reduced in the following taxable year in order to decrease individual income tax revenue by the amount of additional sales and use tax revenue. Finally, DOR must certify its determinations to the secretary of administration, to the governor, and to the legislature and specify that the new individual income tax rates will take effect in the following year. No further legislation is required to make this change.

The U.S. Supreme Court recently upheld a South Dakota law that required the collection of state sales and use taxes from any out-of-state seller that either conducts 200 or more transactions annually with consumers in the state or has annual sales in the state exceeding \$100,000. See, *South Dakota v. Wayfair, Inc.*, 585 U.S. ____ (2018). The *Wayfair* decision overturned longstanding precedent that prevented a state from collecting sales and use tax from out-of-state sellers that did not have a physical presence in the state. See, *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

This bill clarifies that the recent U.S. Supreme Court decision that expands a state's authority to collect sales and use taxes from out-of-state retailers triggers the determinations mentioned above. The bill also provides that the new individual income tax rates based on the determinations would not take effect automatically in the year following DOR's certification, but, instead, the Department of Administration, in consultation with DOR, would determine the new tax rates to take effect for the taxable year ending on December 31, 2019, and report its determinations to the governor, the Joint Committee on Finance, and the Legislative Audit Bureau. LAB would then review the determinations and report its findings to JCF and the Joint Legislative Audit Committee. If LAB's review results in a re-determination of the rates, JCF would determine which rates apply to the taxable year ending on December 31, 2019, and report its determination to the governor, the secretary of administration, and the secretary of revenue. Finally, the bill includes in the definition of a "retailer engaged in business in this state" any retailer that has annual gross sales into this state in excess of \$100,000 or an annual number of separate sales transactions into this state of 200 or more.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 73.03 (71) of the statutes is amended to read:

2 73.03 (71) (a) To determine the amount of additional revenue that reported to
3 the department collected from the taxes imposed under subch. III of ch. 77 as a result
4 of any federal law to expand the United States Supreme Court decision that expands
5 the state's authority to require out-of-state retailers to collect and remit the taxes
6 imposed under subch. III of ch. 77 on purchases by Wisconsin residents during the
7 first 12 months following the date on which the department begins collecting the
8 additional revenue as a result of a change in federal law period beginning on October
9 1, 2018, and ending on September 30, 2019.

10 (b) After the department makes the determination under par. (a), the
11 department of administration, in consultation with the department of revenue, shall
12 determine how much the individual income tax rates under s. 71.06 may be reduced

1 ~~in the following for the taxable year ending on December 31, 2019,~~ in order to
2 decrease individual income tax revenue by the amount determined under par. (a).
3 For purposes of this paragraph, ~~the department shall calculate~~ the tax rate
4 reductions shall be calculated in proportion to the share of gross tax attributable to
5 each of the tax brackets under s. 71.06 in effect during the most recently completed
6 taxable year.

7 (c) ~~The department~~ No later than October 20, 2019, the secretary of
8 administration shall certify and report the determinations made under pars. (a) and
9 (b) ~~to the secretary of the department of administration, to the governor, and to the~~
10 ~~legislature~~ the joint committee on finance, and the legislative audit bureau and
11 specify with that certification and report that the new tax rates take effect ~~in~~ for the
12 taxable year ~~following the taxable year in which the department makes the~~
13 ~~certification under this paragraph ending on December 31, 2019, subject to par. (d).~~

14 **SECTION 2.** 73.03 (71) (d) of the statutes is created to read:

15 73.03 (71) (d) The legislative audit bureau shall review the determinations
16 reported under par. (c) and report its findings to the joint legislative audit committee
17 and the joint committee on finance no later than November 1, 2019. If the legislative
18 audit bureau's review of the determinations reported under par. (c) results in a
19 different calculation of the tax rates than that made under par. (b), the joint
20 committee on finance shall determine which tax rates to apply to the taxable year
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22 secretary of administration, and the secretary of revenue no later than November 10,
23 2019.

24 **SECTION 3.** 77.51 (13g) (intro.) of the statutes is amended to read:

1 77.51 (13g) (intro.) Except as provided in sub. ~~subs. (13gm) and~~ (13h), “retailer
2 engaged in business in this state”, for purposes of the use tax, includes any of the
3 following:

4 **SECTION 4.** 77.51 (13gm) of the statutes is created to read:

5 77.51 (13gm) (a) “Retailer engaged in business in this state” does not include
6 a retailer who has no activities as described in sub. (13g), except for activities
7 described in sub. (13g) (c), unless the retailer meets either of the following criteria
8 in the previous year or current year:

9 1. The retailer’s annual gross sales into this state exceed \$100,000.

10 2. The retailer’s annual number of separate sales transactions into this state
11 is 200 or more.

12 (b) If an out-of-state retailer’s annual gross sales into this state exceed
13 \$100,000 in the previous year or the retailer’s annual number of separate sales
14 transactions into this state is 200 or more in the previous year, the retailer shall
15 register with the department and collect the tax imposed under s. 77.52 or 77.53 on
16 sales sourced to this state under s. 77.522 for the entire current year.

17 (c) If an out-of-state retailer’s annual gross sales into this state are \$100,000
18 or less in the previous year and the retailer’s annual number of separate sales
19 transactions into this state is less than 200 in the previous year, the retailer is not
20 required to register with the department and collect the tax imposed under s. 77.52
21 or 77.53 on sales sourced to this state under s. 77.522 until the retailer’s sales or
22 transactions meet the criteria in par. (a) 1. or 2. for the current year, at which time
23 the retailer shall register with the department and collect the tax for the remainder
24 of the current year.

25 (d) All of the following apply for purposes of this subsection:

- 1 1. "Year" means the retailer's taxable year for federal income tax purposes.
- 2 2. The annual amounts described in this subsection include both taxable and
- 3 nontaxable sales.
- 4 3. Each required periodic payment of a lease or license is a separate sales
- 5 transaction.
- 6 4. Deposits made in advance of a sale are not sales transactions.
- 7 5. An out-of-state retailer's annual amounts include all sales into this state
- 8 by the retailer on behalf of other persons and all sales into this state by another
- 9 person on the retailer's behalf.

10

(END)



Insert 5-9

**2019-2020 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-6025/P3ins
MPG:wlj&kjf

INSERT 5-9

1 SECTION 1. Nonstatutory provisions.

2 (1) The secretary of administration shall exclude from the calculation under s.
3 16.518 (2) all additional revenue deposited in the general fund that is attributable
4 to a decrease in individual income tax rates under s. 73.03 (71), as determined by the
5 secretary of administration in consultation with the department of revenue.

END INSERT 5-9



11/29

Abbey

- Exclude additional revenue from increased sales tax and decreased income tax for purposes of the transfer to the budget stabilization fund. One time only.

MPG



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-6025/P3
JK&MPG:wlj&kjf *py* *MM*

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- PwF* ✓ *NOW* *Regen* ✓
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2 **73.03 (71)** (a) To determine the amount of additional revenue ~~that reported to~~
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5 the state's authority to require out-of-state retailers to collect and remit the taxes
6 imposed under subch. III of ch. 77 on purchases by Wisconsin residents during the
7 ~~first 12 months following the date on which the department begins collecting the~~
8 ~~additional revenue as a result of a change in federal law~~ period beginning on October
9 1, 2018, and ending on September 30, 2019.

10 (b) After the department makes the determination under par. (a), the
11 department of administration, in consultation with the department of revenue, shall
12 determine how much the individual income tax rates under s. 71.06 may be reduced

1 ~~in the following for the taxable year ending on December 31, 2019,~~ in order to
2 decrease individual income tax revenue by the amount determined under par. (a).
3 For purposes of this paragraph, ~~the department shall calculate~~ the tax rate
4 reductions shall be calculated in proportion to the share of gross tax attributable to
5 each of the tax brackets under s. 71.06 in effect during the most recently completed
6 taxable year.

7 (c) ~~The department~~ No later than October 20, 2019, the secretary of
8 administration shall certify and report the determinations made under pars. (a) and
9 (b) ~~to the secretary of the department of administration, to the governor, and to the~~
10 ~~legislature~~ the joint committee on finance, and the legislative audit bureau and
11 specify with that certification and report that the new tax rates take effect ~~in for~~ the
12 taxable year ~~following the taxable year in which the department makes the~~
13 ~~certification under this paragraph~~ ending on December 31, 2019, subject to par. (d).

14 **SECTION 2.** 73.03 (71) (d) of the statutes is created to read:

15 73.03 (71) (d) The legislative audit bureau shall review the determinations
16 reported under par. (c) and report its findings to the joint legislative audit committee
17 and the joint committee on finance no later than November 1, 2019. If the legislative
18 audit bureau's review of the determinations reported under par. (c) results in a
19 different calculation of the tax rates than that made under par. (b), the joint
20 committee on finance shall determine which tax rates to apply to the taxable year
21 ending on December 31, 2019, and report its determination to the governor, the
22 secretary of administration, and the secretary of revenue no later than November 10,
23 2019.

24 **SECTION 3.** 77.51 (13g) (intro.) of the statutes is amended to read:

1 77.51 (13g) (intro.) Except as provided in sub. ~~subs. (13gm) and~~ (13h), "retailer
2 engaged in business in this state", for purposes of the use tax, includes any of the
3 following:

4 **SECTION 4.** 77.51 (13gm) of the statutes is created to read:

5 77.51 (13gm) (a) "Retailer engaged in business in this state" does not include
6 a retailer who has no activities as described in sub. (13g), except for activities
7 described in sub. (13g) (c), unless the retailer meets either of the following criteria
8 in the previous year or current year:

9 1. The retailer's annual gross sales into this state exceed \$100,000.

10 2. The retailer's annual number of separate sales transactions into this state
11 is 200 or more.

12 (b) If an out-of-state retailer's annual gross sales into this state exceed
13 \$100,000 in the previous year or the retailer's annual number of separate sales
14 transactions into this state is 200 or more in the previous year, the retailer shall
15 register with the department and collect the tax ^{administered} imposed under s. 77.52 or 77.53 on
16 sales sourced to this state under s. 77.522 for the entire current year.

17 (c) If an out-of-state retailer's annual gross sales into this state are \$100,000
18 or less in the previous year and the retailer's annual number of separate sales
19 transactions into this state is less than 200 in the previous year, the retailer is not
20 required to register with the department and collect the tax ² imposed under s. 77.52
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22 transactions meet the criteria in par. (a) 1. or 2. for the current year, at which time
23 the retailer shall register with the department and collect the tax for the remainder
24 of the current year.

25 (d) All of the following apply for purposes of this subsection:

administered

1 1. “Year” means the retailer’s taxable year for federal income tax purposes.

2 2. The annual amounts described in this subsection include both taxable and
3 nontaxable sales.

4 3. Each required periodic payment of a lease or license is a separate sales
5 transaction.

6 4. Deposits made in advance of a sale are not sales transactions.

7 5. An out-of-state retailer's annual amounts include all sales into this state
8 by the retailer on behalf of other persons and all sales into this state by another
9 person on the retailer's behalf.

10 **SECTION 5. Nonstatutory provisions.**

(1) The secretary of administration shall exclude from the calculation under s. 16.518 (2) all additional revenue deposited in the general fund that is attributable to a decrease in individual income tax rates under s. 73.03 (71), as determined by the secretary of administration in consultation with the department of revenue.

15 (END)



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-6025/R4
JK&MPG:wlj/kjf/amn

P5

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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15 register with the department and collect the taxes administered under s. 77.52 or
16 77.53 on sales sourced to this state under s. 77.522 for the entire current year.

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22 or transactions meet the criteria in par. (a) 1. or 2. for the current year, at which time
23 the retailer shall register with the department and collect the tax for the remainder
24 of the current year.

25 (d) All of the following apply for purposes of this subsection:

RESEARCH APPENDIX

Date Transfer Requested: 11/30/2018 (Per: CMH)

Appendix U ... has been added to the 2017 LRB-6074

Appendix A	LRB 17-5979	Appendix W	LRB 17-6028
Appendix B	LRB 17-5982	Appendix X	LRB 17-6031
Appendix C	LRB 17-5983	Appendix Y	LRB 17-6036
Appendix D	LRB 17-5985	Appendix Z	LRB 17-6037
Appendix E	LRB 17-5986	Appendix AA	LRB 17-6038
Appendix F	LRB 17-5989	Appendix BB	LRB 17-6039
Appendix G	LRB 17-5990	Appendix CC	LRB 17-6040
Appendix H	LRB 17-5995	Appendix DD	LRB 17-6041
Appendix I	LRB 17-5998	Appendix EE	LRB 17-6042
Appendix J	LRB 17-6001	Appendix FF	LRB 17-6043
Appendix K	LRB 17-6004	Appendix GG	LRB 17-6046
Appendix L	LRB 17-6006	Appendix HH	LRB 17-6047
Appendix M	LRB 17-6007	Appendix II	LRB 17-6048
Appendix N	LRB 17-6012	Appendix JJ	LRB 17-6049
Appendix O	LRB 17-6015	Appendix KK	LRB 17-6050
Appendix P	LRB 17-6017	Appendix LL	LRB 17-6051
Appendix Q	LRB 17-6019	Appendix MM	LRB 17-6052
Appendix R	LRB 17-6021	Appendix NN	LRB 17-6058
Appendix S	LRB 17-6023	Appendix OO	LRB 17-6059
Appendix T	LRB 17-6024	Appendix PP	LRB 17-6065
Appendix U	LRB 17-6025	Appendix QQ	LRB 17-6067
Appendix V	LRB 17-6027		



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-6025/P5
JK&MPG:wlj/kjf/amn

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For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 73.03 (71) of the statutes is amended to read:

2 73.03 (71) (a) To determine the amount of additional revenue that reported to
3 the department collected from the taxes imposed under subch. III of ch. 77 as a result
4 of any federal law to expand the United States Supreme Court decision that expands
5 the state's authority to require out-of-state retailers to collect and remit the taxes
6 imposed under subch. III of ch. 77 on purchases by Wisconsin residents during the
7 first 12 months following the date on which the department begins collecting the
8 additional revenue as a result of a change in federal law period beginning on October
9 1, 2018, and ending on September 30, 2019.

10 (b) After the department makes the determination under par. (a), the
11 department of administration, in consultation with the department of revenue, shall
12 determine how much the individual income tax rates under s. 71.06 may be reduced

1 ~~in the following for the taxable year ending on December 31, 2019,~~ in order to
2 decrease individual income tax revenue by the amount determined under par. (a).
3 For purposes of this paragraph, ~~the department shall calculate the tax rate~~
4 ~~reductions shall be calculated~~ in proportion to the share of gross tax attributable to
5 each of the tax brackets under s. 71.06 in effect during the most recently completed
6 taxable year.

7 (c) ~~The department~~ No later than October 20, 2019, the secretary of
8 administration shall certify and report the determinations made under pars. (a) and
9 (b) ~~to the secretary of the department of administration, to the governor, and to the~~
10 ~~legislature~~ the joint committee on finance, and the legislative audit bureau and
11 specify with that certification and report that the new tax rates take effect in for the
12 taxable year following ~~the taxable year in which the department makes the~~
13 ~~certification under this paragraph ending on December 31, 2019, subject to par. (d).~~

14 SECTION 2. 73.03 (71) (d) of the statutes is created to read:

15 73.03 (71) (d) The legislative audit bureau shall review the determinations
16 reported under par. (c) and report its findings to the joint legislative audit committee
17 and the joint committee on finance no later than November 1, 2019. If the legislative
18 audit bureau's review of the determinations reported under par. (c) results in a
19 different calculation of the tax rates than that made under par. (b), the joint
20 committee on finance shall determine which tax rates to apply to the taxable year
21 ending on December 31, 2019, and report its determination to the governor, the
22 secretary of administration, and the secretary of revenue no later than November 10,
23 2019.

24 SECTION 3. 77.51 (13g) (intro.) of the statutes is amended to read:

1 77.51 (13g) (intro.) Except as provided in ~~sub.~~ subs. (13gm) and (13h), “retailer
2 engaged in business in this state”, for purposes of the use tax, includes any of the
3 following:

4 **SECTION 4.** 77.51 (13gm) of the statutes is created to read:

5 77.51 (13gm) (a) “Retailer engaged in business in this state” does not include
6 a retailer who has no activities as described in sub. (13g), except for activities
7 described in sub. (13g) (c), unless the retailer meets either of the following criteria
8 in the previous year or current year:

- 9 1. The retailer’s annual gross sales into this state exceed \$100,000.
10 2. The retailer’s annual number of separate sales transactions into this state
11 is 200 or more.

12 (b) If an out-of-state retailer’s annual gross sales into this state exceed
13 \$100,000 in the previous year or the retailer’s annual number of separate sales
14 transactions into this state is 200 or more in the previous year, the retailer shall
15 register with the department and collect the taxes administered under s. 77.52 or
16 77.53 on sales sourced to this state under s. 77.522 for the entire current year.

17 (c) If an out-of-state retailer’s annual gross sales into this state are \$100,000
18 or less in the previous year and the retailer’s annual number of separate sales
19 transactions into this state is less than 200 in the previous year, the retailer is not
20 required to register with the department and collect the taxes administered under
21 s. 77.52 or 77.53 on sales sourced to this state under s. 77.522 until the retailer’s sales
22 or transactions meet the criteria in par. (a) 1. or 2. for the current year, at which time
23 the retailer shall register with the department and collect the tax for the remainder
24 of the current year.

25 (d) All of the following apply for purposes of this subsection:

